THE HIGH COURT OF UTTARANCAL AT NAINITAL

Writ Petition (M/S) No. 3160 of 2001.
(Old CMWP No. 28171 of 1993)

Gopal Singh Son of Sardar Jagar Singh, Resident of Ward No.I, Kalyani View, Rudrapur, District Nainital (now U.S. Nagar).

…….. **Petitioner**

Vs.

1. State of U.P.
2. The Prescribed Authority, Rudrapur, District Nainital.
3. Special Judge (Additional District Judge) Nainital.
4. Nagar Palika Rudrapur, District Nainital.

……..**Respondents.**

Sri Alok Mehra, learned counsel for the petitioner.
Sri Bhupender Singh, Learned Standing Counsel for the respondents no. 1 to 3.
Sri Sandeep Tandon, learned counsel for the respondent no.4.

Dated July 28, 2006

P.C.: Hon'ble B.S. Verma, J.

By means of this writ petition, the petitioner has challenged the orders dated 4-7-1992 passed by the Prescribed Authority and the judgment order dated 18.5.1993 passed the appellate court. The Prescribed Authority vide order dated 7-4-1992 confirmed the notice issued against the petitioner under the Public Premises Act (**U.P. Act No. XXII of 1972**) and ordered his eviction form the public premises. In appeal, the order passed by the Prescribed Authority was upheld and the appeal was dismissed.

Relevant facts giving rise to the writ petition are that on the complaint made by the respondent no.4 before the Prescribed Authority, show cause notice was issued to the petitioner Gopal Singh as to why he be noted evicted from the disputed premises. The petitioner filed his objection on the ground that he has been in possession over the disputed land since 1954 and he has been in possession for more than 30 years and has already matured his rights

over the said land. The Prescribed Authority recorded the evidence of the parties, heard them and after perusing the material on record did not find favour with the contention of the petitioner and passed the order of eviction against him. Aggrieved, the petitioner went up in appeal before the Special Judge in Eviction Appeal No. 186 of 1992. The appellate court after hearing both the parties and examining the evidence led by the parties before the Prescribed Authority, particularly on the stand of the appellant that he had matured his rights by efflux of time, it was observed that ***the appellant has not been able to prove satisfactorily that he has been in possession over the land in dispute for a period of more that 30 years before the proceedings for his eviction were started from this land by the Prescribed Authority."*** The appellate court found the order passed by the Prescribed Authority to be proper and legal and dismissed the appeal.

In the writ petition, the impugned orders have been assailed mainly on the ground that the petitioner had perfected rights over the land by prescription.

I have heard the rival contentions of learned counsel for the parties and perused the material on record.

The learned counsel for the petitioner has hammered the impugned orders on the ground that the petitioner has established that he had matured his rights over the disputed premises by prescription, therefore, the petitioner could not have been evicted by summary proceedings under the Public Premises Act No. 22 of 1972. I am not inclined to accept the contention of the petitioner for the following reasons.

Firstly, the petitioner Gopal Singh himself has annexed copy of his deposition dated 23.2.1988 before the Prescribed Authority as Annexure No.5. In the opening line of his statement, the petitioner had deposited that he has been in possession over 100 ft x 150 ft land in

disputed since 1954 and prior to that he was serving in the army. He further deposed that in the year 1974, the Nagar Palika initiated proceedings for his eviction from the disputed land, which ended in his favour. He also stated that he sought for allotment/grant of land before the Government of India as well as State of U.P., but the disputed plot was not allotted to him. His cress-examination was done and he has deposed that he was not allotted any lease or Patta by the State or Nagar Palika. He has clearly stated that *he does not know whether the land belongs to the State or not.* Thus, two things come out form the own deposited of the petitioner-that the petitioner had applied for grant of plot in his favour and that in the year 1974, proceedings for his eviction were initiated by Nagar Palika, which is indicative of the fact that the petitioner's case of adverse possession is on a very weak footing because the petitioner had no knowledge as to who is the true owner of he land. ***Secondly,*** in the judgment passed by the Additional District Judge at page 2, it has been observed that ***"thus, except claiming possession over this land since 1954, the objector Gopal Singh has not shown any title or rights over this land. He has also filed earlier show-cause notice dated 13.3.1975 issued to him for eviction regarding his very land by the Prescribed Authority.***

It is pertinent to note that the issue raised by the petitioner right form his objection till the judgment in appeal was duly considered by both the courts below and there is concurrent finding of fact that the petitioner could not establish his right by prescription by cogent and reliable evidence. Even otherwise this Court while exercising writ jurisdiction cannot sit like a court of appeal so as to reappraise the evidence and arrive at a different conclusion. Moreover, the record no where indicates that the petitioner has show before the courts below that he has been in continuous and uninterrupted possession for the prescribed period of 30 years *in the knowledge of the true owner and his possession was adverse to the owner of the land.* The Prescribed Authority as well as the appellate court has rightly rejected the contention of the petitioner.

It is significant to mention here that the grounds raised in the memo of writ petition are on the finding of fact and all these points stand answered by concurrent finding of fact recorded by two courts below and referred to hereinbefore. No infirmity or illegality or manifest error law could be pointed out by the learned counsel for the petitioner in the impugned judgment and orders. I do not find any merit in the present writ petition, which is liable to be dismissed.

The writ petition is hereby dismissed. No order as to costs.

Interim order dated 18-08-1993 is hereby vacated.

(B. S. Verma, J.)

RCP